

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELIGIO CEDENO, et al., :  
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Plaintiffs, :  
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v. :  
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INTECH GROUP, INC., et al., :  
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Defendants. :  
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CASE NO. 09-CV-9716(JSR)

**DEFENDANT ZAMBRANO'S REPLY TO PLAINTIFFS'  
SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT**

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Date: July 27, 2010

**TABLE OF AUTHORITIES**

**Cases**

*United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982), *cert. denied*, 461 U.S. 913 (1983),  
*overruled on other grounds*, *McNally v. United States*, 483 U.S. 350 (1987).....1, 2

**Statutes and Rules**

18 U.S.C. § 2.....2

The question is not, as Plaintiffs appear to suggest (Plaintiffs' supplemental memorandum, Introduction, pg. 1, DE 94), whether private individuals can be found liable for extortion under color of official right.<sup>1</sup> They can be; however, as Zambrano showed, only as aiders and abettors, which is why the extortions charged against Zambrano and the other Defendants do not qualify as predicate acts constituting a pattern of racketeering activity.

Plaintiffs again fail to address Zambrano's argument that there is no aiding and abetting liability under RICO. As Zambrano showed (supplemental memorandum, p. 2, DE 93), this Court has clearly held that there is no such liability.

Plaintiffs do continue to rely on collective, conclusory allegations regarding the extortions, without any showing of a factual basis, and, with regard to Zambrano, which are contrary to their more specific allegations against him. Thus, they quote (Plaintiffs' Supplemental Memorandum, pg. 3) the Complaint's allegation that Zambrano, Lara, Braschi, Idler, Alhambra, et al., "personally moved money constituting the proceeds of the extortion defined immediately above into U.S. banks." However, as Zambrano has repeatedly shown – and Plaintiffs never acknowledge – the Complaint specifically alleges that Zambrano's attempt on behalf of Carreño, the Minister of Justice and the Interior, failed, so there were no proceeds which he is alleged to have received. (See Zambrano's Memorandum, pp. 13, n.9, 15, n.11, DE 60; Reply, pp. 5 – 6, DE 82; supplemental memorandum, p. 2, DE 93.) Indeed, there is no specific allegation in the Complaint that Zambrano did receive any monies, that he has a U.S. bank account, or that he made any transfers.

Finally, the Plaintiffs incorrectly describe the holding of *Margiotta* as it relates to this issue. They cite to it at 688 F.2d 131-132, without any quotation from its text, implying that the opinion does not state Margiotta was liable for the Hobbs Act violations as an aider and abettor

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<sup>1</sup> Plaintiffs' argument on the Hobbs Act issue is at pp. 9 – 10, of their supplemental memorandum.

under 18 U.S.C. § 2. However, that is wrong. Those are precisely the pages from the decision quoted by Zambrano (Supplemental Memorandum, p. 4) in which the Court of Appeals explained that Margiotta, although not himself a public official, “could be found guilty of extortion ‘under color of official right pursuant to 18 U.S.C. § 2(b) . . .’” *Margiotta*, at 131.<sup>2</sup>

As the Defendants have shown in their motions, this Complaint suffers from a number of defects, each of which is sufficient by itself to require dismissal. This defect in the pleading of the predicate acts of extortion is one of them.

For the above reasons, those stated in his memoranda and by the Defendants in their motions and supplemental memoranda on extraterritorial application, Zambrano respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,

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<sup>2</sup> As Zambrano stated in his supplemental memorandum (pg. 4), the Court correctly noted at the hearing that Margiotta’s conviction for honest services mail fraud was not based on § 2 liability.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of July, 2010, I electronically filed the papers relating to Defendant Jose Jesus Zambrano Lucero's Second Supplemental Memorandum of Law in Support of His Motion to Dismiss the Amended Complaint with the Clerk of the Court via transmission of notices of electronic filing generated by CM/ECF on:

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